

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Petition for Interim Waiver of	)	CC Docket No. 80-286
Section 36.2(a)(3) Filed by:	)	DA 98-909
The National Exchange Carrier	)	
Association, Inc.	)	

**REPLY COMMENTS OF SBC COMMUNICATIONS, INC.**

SBC Communications Inc. ("SBC") provides these Reply Comments in accordance with Public Notice DA 98-909, requesting comments and reply comments on the Petition for Interim Waiver filed by the National Exchange Carrier Association (NECA) seeking a waiver of Section 36.2(a)(3) of the Commission's rules.<sup>1</sup> This rule requires that telephone companies determine "actual use" measurements based on "studies of traffic handled or work performed during a representative period for all traffic."<sup>2</sup>

**I. TRAFFIC ASSOCIATED WITH INTERNET USAGE IS INTERSTATE AND SHOULD BE TREATED AS SUCH FOR SEPARATIONS PURPOSES.**

The vast majority of parties filing comments in response to the Commission's Public Notice support granting the Petition as filed. Even more important, however, is the fact that the majority of parties, including SBC, agree that Internet usage is interstate in nature and should be reflected that way in the separations process. Several of the

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<sup>1</sup> 47 C.F.R. 36.2(a)(3).

<sup>2</sup> See NECA Petition at p. 1.

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commenters provide additional confirmation of the fact that Internet usage is indeed interstate in nature.<sup>3</sup>

The HSA/Pottawatomie Group cites several instances in which federal prosecution has occurred concerning the use of Internet facilities to illegally provide pornographic materials across state lines.<sup>4</sup> Certainly, since the FBI and the Department of Justice have already recognized that the Internet is subject to laws regarding interstate commerce, it would be flatly inconsistent for the Commission to state that it is not interstate. Also, the Park Region Telephone Company, who identifies itself as both a telephone company and an Internet service provider, provides specific evidence that “less than two percent of the inquiries to our Minnesota Web Site originate in Minnesota.”<sup>5</sup> This is additional clear evidence that the preponderance of Internet traffic is interstate in nature. ICORE, Kerrville, Park Region, and TELECOM provide specific information regarding the interstate nature of Internet traffic and the impacts that it causes if misclassified as “local.”<sup>6</sup> This information provides additional support for the Commission to conclude that Internet use should be considered jurisdictionally interstate and that misclassification as “local,” as shown in NECA’s cost study guideline, should be

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<sup>3</sup> See Comments of Bell South, at p. 2; Comments of Small Western LEC’s, at p. 2; Comments of Exchange Carriers of Utah, at p. 2; Comments of Fred Williamson, at p. 3; Comments of Harris, Skrivan & Associates (Pottawatomie Group), at p. 2; Comments of Home Telephone, at p. 3; Comments of ICORE at p. 2; Comments of John Staurulakis, at p. 5; Comments of Kerrville, at p. 2; Comments of Northeast Florida, at p. 2; Comments of Park Region, at p. 1; Comments of Plant Tel. Co., at p. 1; Comments of Rural Tel. Coalition, at p. 2; Comments of TDS, at p. 3; Comments of USTA, at pp. 2-3, Comments of VITA, at p. 2; Comments of WETA/WECA/OECA, at p. 2; Comments of Western Alliance, at p. 1.

<sup>4</sup> See Comments of Harris, Skrivan & Associates (Pottawatomie Group), at p. 2.

<sup>5</sup> See Comments of Park Region, at p. 1.

<sup>6</sup> See Comments of ICORE at pp. 2-3; Comments of Kerrville, at p. 3; Comments of Park Region, at p. 1; and Comments of TELECOM, at p. 2.

immediately corrected. SBC agrees with those companies who state that they believe the separations procedures do not preclude the classification of Internet traffic as interstate.<sup>7</sup>

The arguments raised by ALTS and MCI questioning the basis for NECA's Petition are a mere smoke screen. ALTS's assertion that carriers cannot petition for waiver is baseless.<sup>8</sup> Regardless who requests the waiver, if it is still subject to review by the regulatory body and, in this case, the comments of interested parties, due process is served. ALTS' and MCI's argument regarding the jurisdiction of Internet traffic is addressed by the simple observation of Northeast Florida when it states: "The fact that the Commission decided the Internet service providers, operating under an information service provider ('ISP') classification, require an exemption from interstate access charges clearly demonstrates that the usage is interstate in nature. Otherwise, there would be no interstate traffic originated or terminated for which an exemption would be needed."<sup>9</sup>

## **II. POSSIBLE DIFFICULTY IN MEASURING INTERNET USAGE IS NO REASON TO CLASSIFY IT AS LOCAL.**

There are two reasons often stated as to why certain parties do not classify Internet as interstate, even though they may acknowledge that it is in fact interstate in nature. First, several commenting parties have stated that the NECA cost study

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<sup>7</sup> See Comments of Harris, Skrivan & Associates (Pottawatomie Group), at p. 2; Comments of Home Telephone, at p. 7; and Comments of Western Alliance, at p. 1.

<sup>8</sup> See Opposition of the Association for Local Telecommunications Services, at p. 8.

<sup>9</sup> See Comments of Northeast Florida, at p. 2. See also NECA Petition, at pp. 2-4.

guidelines for pooling carriers require that Internet usage be treated as “local.”<sup>10</sup> SBC agrees with Fred Williamson & Associates, Inc. which notes correctly that this is merely an interpretation by NECA and is subject to a Commission ruling/order.<sup>11</sup>

Second, and we suspect this is the real reason that some parties do not want Internet classified as interstate, several commenters observe that it is difficult to measure the traffic associated with Internet usage.<sup>12</sup> SBC agrees with Home Telephone Company that while it may be difficult to measure the amount of Internet traffic which is interstate, it is an undisputed fact that the majority of Internet traffic crosses state lines.<sup>13</sup> SBC identified the procedures it uses to determine Internet usage in its Comments.<sup>14</sup> SBC concurs with Home Telephone Company in the assessment that the mere fact that there may be difficulty in measuring such traffic is not a sufficient reason to classify all Internet traffic as intrastate.<sup>15</sup>

### **III. CONCLUSION**

SBC agrees with those who urge the Commission to address the real problem and simply declare that Internet usage should be treated as jurisdictionally interstate.<sup>16</sup> This

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<sup>10</sup> See Comments of WITA, WECA, OECA, at p. 3; Comments of John Staurulakis, at p. 3; Comments of Fred Williamson, at p. 3.

<sup>11</sup> See Comments of Fred Williamson, at p. 3.

<sup>12</sup> See Comments of Northeast, at p. 2; Comments of TDS, at p. 5; and Comments of Western Alliance, at p. 7).

<sup>13</sup> See Comments of Home Telephone Company, at p. 6.

<sup>14</sup> See Comments of SBC Communications Inc., at pp. 5-6.

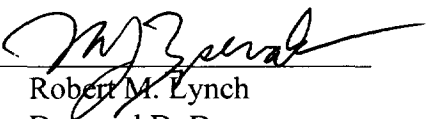
<sup>15</sup> See Comments of Home Telephone Company, at p. 6.

<sup>16</sup> See Comments of FW&A, at p. 6; Comments of USTA, at p. 3; and Comments of WITA/WECA/OECA, at p. 3.

simple action would moot the need for any waivers as suggested by NECA and would resolve the dilemma once and for all. Any other action would be merely a stop-gap measure and would require additional action by the Commission and the parties, while keeping the entire industry in a state of uncertainty for no good reason.

Respectfully submitted

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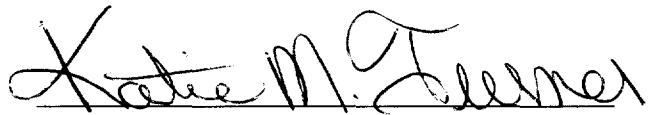
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June 18, 1998

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "REPLY COMMENTS OF SBC COMMUNICATIONS INC." in CC Docket No. 80-286 has been filed this 18th day of June, 1998 to the Parties of Record.

A handwritten signature in cursive script that reads "Katie M. Turner". The signature is written in black ink and is positioned above a horizontal line.

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